

MEMORANDUM

TO: Board Members
FROM: Susan W. Berry
RE: **BERMUDEZ-COTA**
DATE: August 22, 2018

- I. Board Panel: John W. Guendelsberger, Molly Kendall Clark, Edward F. Kelly
- II. Immigration Judge: Sean H. Keenan
- III. Circuit: Ninth Circuit (Tucson, Arizona)
- IV. Issues: Whether proceedings must be terminated under *Pereira v. Sessions*, 585 U.S. ___, 138 S. Ct. 2105 (2018), based on the fact that the respondent's Notice to Appear did not include the date and time of his initial removal hearing.
- V. Procedural History: The Immigration Judge issued a decision on October 3, 2017 denying the respondent's motions for a continuance and for administrative closure but granting the respondent's application for voluntary departure. During the pendency of the appeal, the respondent filed a motion to terminate based on *Pereira v. Sessions*. The Department of Homeland Security filed an opposition to the motion. The respondent's case does not involve an application for cancellation of removal.
- VI. Briefs: The DHS filed an opposition to the respondent's motion to terminate.
- VII. Governing statutes/regulations/case law:
 - A. Statutes:
 - 8 U.S.C. § 1229b(b)(1)(A), (d)(1): Establishing the continuous physical presence requirement for cancellation of removal and providing that a period of continuous physical presence shall be deemed to end when an alien is served with a notice to appear under section 239(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a).
 - 8 U.S.C. § 1229(a)(1): providing that in removal proceedings, "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying" several pieces of information, including the time and place at which the proceedings will be held.
 - B. Regulations:
 - 8 C.F.R. § 1003.14
 - 8 C.F.R. § 1003.18(a)
 - C. Case Law:
 - Pereira v. Sessions*, 585 U.S. ___, 138 S. Ct. 2105 (2018)
 - Popa v. Holder*, 571 F.3d 890 (9th Cir. 2009).
 - Gomez-Palacios v. Holder*, 560 F.3d 354 (5th Cir. 2009)
 - Haider v. Gonzales*, 438 F.3d 902 (8th Cir. 2006)

VIII. Arguments: The respondent argues in his motion to terminate that he received a legally defective Notice to Appear that did not contain the date and time of his hearing. The respondent further contends that if a Notice to Appear is defective under section 239(a)(1) of the Act, then it is not defective only for purposes of the cancellation of removal stop-time rule but is defective in its entirety. The respondent argues that a defective Notice to Appear cannot vest the Immigration Judge with jurisdiction either in a stop-time rule case or in any other removal case where the Notice to Appear was defective.

IX. Holding: The panel concludes that the respondent has not presented a meritorious basis for termination because the Court in *Pereira* did not terminate proceedings based on a Notice to Appear that lacked the date and time of the hearing, but instead remanded for further proceedings on Pereira's cancellation of removal application. The panel also concludes that a two-step notice process is sufficient to meet the statutory notice requirements. The panel dismisses the respondent's appeal with respect to the denial of administrative closure and reinstates the respondent's period of voluntary departure.